

ENVIRONMENTAL PROTECTION AGENCY

PUBLIC HEARING

In Re: Transportation Conformity Rule:
PM 2.5 and PM 10 Amendments
Notice of Proposed Rulemaking

June 4, 2009
9:30 a.m.

LOCATION: Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105

PANEL: Leila Cook, Group Manager
Transportation and Regional Programs
Office of Transportation and Air Quality, OAR

Meg Patulski, Presiding Officer
Transportation and Regional Programs
Office of Transportation and Air Quality, OAR

Laura Voss Berry
Transportation Conformity Team
Office of Transportation and Air Quality, OAR

ALSO PRESENT:

Adrian Martinez, NRDC
Patricia A. Klavon, EPA
Astrid Larsen, EPA
David Bizot, EPA

Members of the Public and Others

REPORTER: Laurel A. Jacoby, CSR-5059, RPR

Ann Arbor, Michigan

June 4, 2009

9:30 a.m.

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MS. COOK: Good morning. I'm Lee Cook and welcome to today's hearing. I'm the group manager for the State Measures and Transportation Conformity Group in the EPA's Office of Transportation and Air Quality. I'd like to welcome you, particularly Adrian who made a trip a long way, to today's public hearing for the Transportation Conformity Rule for PM 2.5 and PM 10 amendments, which would primarily affect conformities implementation, and PM 2.5 and PM 10 nonattainment maintenance areas.

The proposed regulations being considered today were published in the May 15, 2009 edition of the Federal Register. During the development of this proposal, EPA consulted with DOT, as we do with all our regs. Today's hearing is an opportunity for EPA to listen to your comments, ask some clarifying questions on occasion perhaps, and this proposed rule would update our regulation in three ways.

First, EPA is proposing to update the Transportation Conformity Regulation in light of the October 17th, 2006 final rule that strengthened the

24-hour PM 2.5 National Ambient Air Quality
Standard, otherwise known as the NAAQS, and revoke
the annual PM 10 NAAQS. For instance, the proposal
describes when conformity would first apply in 2006
PM 2.5 nonattainment areas.

The proposal also describes the general
requirements for conducting conformity
determinations for 2006 PM 2.5 NAAQS such as the
conformity tests that would apply before and after
state air quality plans for revised PM 2.5 NAAQS --

Also, the proposed rule clarifies which
motor vehicle emissions or SIP budgets, PM 10,
nonattainment and maintenance areas would use for
transportation conformity determinations now that
the annual PM 10 NAAQS has been revoked.

Finally, EPA is proposing to clarify the
conformity regulations concerning project level air
quality analyses to address a December 2009 D.C.
circuit court's remand of the transportation
conformity hot spot requirements for further
explanation. Specifically, the proposed rule would
clarify the federally funded or approved highway and
transit projects in PM 2.5, PM 10 and CO
nonattainment and maintenance areas must not delay
timely attainment or achievement of other interim

1 milestones as required by the Clean Air Act.

2 I'd like to now introduce the members of
3 our panel for today's public hearing. From EPA we
4 have Meg Patulski on my far left and Laura Berry on
5 my near left. Both are from the Transportation
6 Conformity Team. Meg will act as today's presiding
7 officer. I want to conclude by thanking you for
8 attending today's hearing and we appreciate your
9 interest and we look forward to your thoughtful
10 comments on the proposal.

11 MS. PATULSKI: I'll go over the presiding
12 officer remarks next. Today I will be serving as
13 the presiding officer for the hearing. Before
14 getting started with today's testimony, I would like
15 to take a few minutes to read a prepared statement
16 to outline how we will hold this hearing.

17 We are conducting this hearing under the
18 Clean Air Act in order to provide interested persons
19 with an opportunity for oral presentations of data,
20 views or arguments. This hearing provides the
21 opportunity for such oral presentations. The
22 official record of this hearing will be kept open
23 until June 29th, 2009 for submission of rebuttal and
24 supplemental testimony.

25 The hearing will be conducted informally.

1 The formal rules of evidence will not apply. The
2 presiding officer, however, is authorized to strike
3 statements from the record which are deemed
4 irrelevant or needlessly repetitious and to enforce
5 reasonable limits on the duration of the statement
6 of any witness.

7 Witnesses must state their name and
8 affiliation prior to making their statement. When a
9 witness has finished his or her presentation,
10 members of the panel will have an opportunity to ask
11 questions related to the testimony. Witnesses are
12 reminded that any false statements or false
13 responses to questions may be a violation of law.
14 Witnesses will have a chance later in the hearing to
15 provide rebuttal and supplemental testimony. In
16 addition, witnesses can submit rebuttal and
17 supplemental testimony until June 29th, 2009.

18 If any members of the audience wishing to
19 testify have not already signed up, please submit
20 your name at the reception table. Everyone
21 attending should sign the register whether or not
22 you testified. Finally, if you would like a
23 transcript of the proceedings, you should make
24 arrangements directly with the court reporter, which
25 is Laurel right here.

1 Following this public hearing, there will
2 be an opportunity for everyone to send us written
3 comments until June 29th. Before we begin, I want
4 to ask if there are any -- Adrian, do you have any
5 or others have any clarification questions?

6 MR. MARTINEZ: No.

7 MS. PATULSKI: Would you like a short break
8 before we get started? Obviously, you have time.
9 You just rushed in the door. If you'd like to do
10 that, just ask.

11 MR. MARTINEZ: I'm fine.

12 MS. PATULSKI: Okay. With that, we'll
13 begin with the first speaker. Go ahead, Adrian.

14 MR. MARTINEZ: My name is Adrian Martinez
15 and I'm a project attorney with the National
16 Resources Defense Council. I'm based out of our
17 Santa Monica office. There was some other groups
18 who wanted to attend but due to travel constraints
19 they couldn't so they will likely be filing comments
20 before the June 29th deadline.

21 And I have some documents that I'll submit
22 to the record. A lot of them have already been
23 submitted to EPA in the past. I guess what brings
24 me here today is I work extensively in Los Angeles
25 region on SIP attainment and also, concurrently, I

1 work on reducing emissions from freight transport.
2 And I think, as you know and as in working on these
3 issues, you know the movement of freight and diesel
4 equipment plays an integral role in conformity,
5 especially when you have facilities like the I-710
6 freeway in Los Angeles, the recently approved State
7 Route 47 which is a new diesel freeway that cuts
8 through Wilmington, California. So that's kind of
9 the basis of why I'm here and why I requested the
10 public hearing.

11 I have some prepared remarks but I'll go
12 through the highlights. It's a little bit lengthy
13 to read verbatim, but I'll submit it at the end for
14 the testimony. But we do have some concerns with
15 the current proposal and, specifically, I think it's
16 a concern that stems from the overall approach that
17 is being taken with regards to Clean Air Act and,
18 specifically, the protection of residents in the
19 near highway environment.

20 There's an underlying concern amongst NRDC
21 and several other groups that the current approach
22 to the Clean Air Act does not provide adequate
23 protections, and this concern stems from the state
24 implementation plan guidance that provides for
25 attainment demonstrations to be based on design

1 values derived exclusively from monitored
2 concentrations combined with monitoring siting
3 criteria that direct states not to site regulatory
4 monitors within the micro or middle scale distances
5 from highways and the effect of these decisions
6 effectively entirely exclude highway impacts from
7 the SIP process.

8 And as I'll talk about a little bit later
9 in the studies, these are state studies the EPA has
10 relied on in the past, there's several studies that
11 show that the near highway environment, specifically
12 300 meters from a freeway, is an area of concern.

13 Now, this is all related to the conformity
14 provisions because I think there's an integral
15 relationship, especially in the context of a real
16 world situation like Los Angeles where while it's
17 called a hot spot, as we've shown and using some
18 research that the Environmental Defense Fund did,
19 there are a lot of residents in southern California
20 that are impacted by these freeways and, you know,
21 some would argue that LA might be a -- there are
22 large spots -- places in LA that are impacted.

23 So I guess I'll get to the meat of our
24 concern is in the conformity context we're concerned
25 that the current approach doesn't effectively apply

1 Section 176(c)(1)(B)(iii) for making hot spot
2 determinations. That section bars a conformity
3 finding for any highway project that causes or
4 contributes to delaying timely attainment.

5 And here the proposal proposes to define
6 the section of the act as not applying to the
7 situation where emissions from an expected highway
8 project cause or contribute to NAAQS violations that
9 continue after the attainment deadline.

10 The D.C. Circuit, it's our opinion that
11 they found that an unreasonable interpretation
12 unless the agency defined that the term area meant
13 something different than it meant in (b)(1) and (2),
14 and that's part of the reason we're here today at
15 this public hearing and the amendments were
16 proposed.

17 And we're concerned that this is another
18 attempt to apply the interpretation that the court
19 remanded. And I read that when the original hot
20 spot rule making was completed, one of the
21 justifications for this was that the SIP process
22 would remedy this issue, but at the same time I
23 think one of the problems is that the SIP -- there
24 was an admission that the SIP process was not
25 designed to remedy these NAAQS violations caused by

1 highway emissions. In fact, we have some litigation
2 related to this issue in the south coast,
3 specifically related to region nine.

4 It's our belief that the Clean Air Act
5 requires EPA to ensure that NAAQS violations caused
6 by highway emissions are identified and remedied by
7 the state through the SIP process; however, if this
8 is not the case it becomes all the more important
9 that Section 176(c)(1)(B)(iii) would apply to ensure
10 that there's sufficient emission reduction to attain
11 NAAQS in the near highway environment. And if the
12 SIPs set were adequate, I think we would find
13 ourselves with very few instances where (B)(iii)
14 would be triggered, and we'll articulate that a
15 little bit more in our written comments that will be
16 forthcoming.

17 So I think that's kind of the overarching
18 concern we have here is that the regulatory context
19 isn't providing sufficient protections for residents
20 in the near highway environment. And my testimony
21 has a fair amount of information on the two studies
22 that were completed on the I-405 and the I-710,
23 which I'm sure all of you are intimately aware of.
24 And the concerns it raises about even major freeways
25 with a "normal" amount of truck traffic like I-405

1 but poses even greater concerns for a freeway like
2 the I-710 which has possibly amongst one of the
3 highest density of diesel trucks in the nation.

4 And so we submitted those comments also on
5 the conformity budgets for south coast but I'll
6 re-submit it today. And I think the other thing,
7 the other important aspect of it, is the number of
8 people impacted. EPA's identified 35 million people
9 residing within 100 meters of a four-lane or wider
10 highway and that there are likely many schools and
11 other places located in this zone. That's a
12 significant number.

13 And, as I had mentioned before,
14 Environmental Defense Fund has estimated that
15 approximately 1.5 million people in South Coast Air
16 Base live near -- well, relatively large freeways.
17 And we have kind of how that information was
18 established, they use GIS and census data for 2000.
19 So this is a huge issue impacting many people.

20 I think the other issue and perhaps the
21 reason why I was the one who was going to come out
22 here is to talk about the regional context,
23 especially in southern California. I think what's
24 happening now is we're seeing a massive wholesale
25 expansion of the ports of LA and Long Beach and

1 we're also seeing projects throughout the nation
2 from the American Reinvestment and Recovery Act. So
3 either projects are starting now or they will start
4 in the near future.

5 So just looking at -- let's look at
6 southern California and the ports of LA and Long
7 Beach. Within a little over a year, the ports have
8 moved forward three projects; the TRAPAC Project,
9 China Shipping and the Middle Harbor Redevelopment
10 Project, and when you look at those in the aggregate
11 that's about 3.9 million TEUs. I don't know how
12 familiar you are with freight, but the 20-foot
13 equivalent unit is a unit for measuring container
14 volumes.

15 So that number is quite a large amount.
16 And if you look at the top five container ports, the
17 busiest container ports in the nation according to
18 the American Association of Port Authorities, just
19 adding that number would be the equivalent of the
20 fourth busiest container port in the nation right
21 now. So that's juxtaposed with current existing
22 volumes. As you're well aware, the ports of LA and
23 Long Beach are the first and second busiest ports in
24 the nation.

25 Now, the reason that's a concern is because

1 to move that freight requires a significant number
2 of diesel trucks, trains, ships, and that poses
3 issues in the near highway environment. And
4 especially as the desire, the desire to add more
5 freight -- and to be honest, those three projects,
6 there's a lot longer list of projects that the ports
7 want to pursue. So you're adding a significant
8 number of containers and boxes coming through the
9 region, trucks traveling down the road in an area
10 that's already overburdened, as the MATES data from
11 the South Coast Air Quality Management District
12 recently reconfirmed is the harbor area has some of
13 the highest and some of the most toxic air in the
14 south coast.

15 So with that freight comes these facilities
16 I briefly have mentioned, the I-710 and the State
17 Route 47 which I think are two critical projects
18 moving forward and two critical projects from air
19 quality perspective. We've expressed some serious
20 concerns about State Route 47, and the I-710 project
21 is in more infant stages. They just finished the
22 NOP and they're working on the environmental impact
23 report.

24 But these projects provide the example that
25 we need to make sure that they're moving forward in

1 a way that's going to ensure attainment in the near
2 highway environment and especially important because
3 if you look at the harbor area, it's a lot of
4 sensitive sites, a lot of sensitive sites near
5 freeways and a lot of residences impacted.

6 So I guess right now our initial
7 recommendation, I'll just read it because it's
8 probably easier, to the proposal before EPA is to
9 fix the problem that the current proposal allows for
10 a new or expanded highway project to be found in
11 conformity even if emissions from the highway would
12 continue to cause NAAQS violations after the
13 statutory attainment deadline. Thus here EPA only
14 requires that project emissions must not make NAAQS
15 violations worse.

16 To resolve this issue, the hot spot rule to
17 implement Section 176(c)(1)(B)(iii) shall require
18 that either before an expanded highway project may
19 be approved, the SIP or the project must be modified
20 to reduce emissions to the level needed to attain
21 the NAAQS. Given the critical gap in SIPs to show
22 attainment in the near highway environment, this
23 will help protect residents from harmful impacts
24 that may flow from projects.

25 And just for clarification, we're still

1 reviewing the current regulatory language so we
2 might have some more comments. These are based on
3 our initial review, but that's kind of the meat of
4 the comments. And I'm submitting three documents.
5 One are the comments we filed on the south coast
6 Emission budgets, the second is the brief we filed
7 in the NRDC versus EPA case in the Ninth Circuit
8 related to those emissions budgets, and the third is
9 a letter from Environmental Defense Club, Sierra
10 Club and NRDC about the most recent PM 2.5
11 attainment designations.

12 So I think those are three documents that
13 kind of lay out the issue and I'll submit those now.
14 So that's all I have today. I don't know if there
15 are any questions or --

16 MS. PATULSKI: I have a few questions.

17 MS. COOK: Go ahead.

18 MS. PATULSKI: First I wanted to -- Patty,
19 can you take the documents from him? Thank you.

20 First I wanted to clarify for the record,
21 that when you say you intend -- it's NAAQS
22 violations. When you talk about nox (ph.)
23 violations, you're about NAAQS violations. You're
24 talking about the NAAQS violation.

25 MR. MARTINEZ: NAAQS.

1 MS. PATULSKI: NAAQS violations, okay,
2 rather than nitrogen oxide violations. I just
3 wanted to make sure that that's reflected in the
4 record. It might just be a difference in regional
5 accents.

6 MR. MARTINEZ: Yeah.

7 MS. PATULSKI: And a few just clarifying
8 questions that I have. When you say that before a
9 project, either the project or the applicable SIP
10 needs to be changed to attain the NAAQS beyond the
11 attainment date, could you give me an example of
12 what you mean by -- because you say when the project
13 causes a new violation or worsening violation
14 beyond the attainment date, and in that case, it
15 wouldn't -- such a project when I hear that general
16 statement, it sounds like the project wouldn't pass
17 conformity to begin with because you can't cause any
18 new or worsening violations.

19 So I guess could you provide a little more
20 detail or maybe an example of the kind of situation
21 that you are most concerned about?

22 MR. MARTINEZ: Well, I think the comments
23 we filed on the budgets in the south coast
24 identified kind of one of the flaws especially
25 specific to the south coast in how attainment is

1 shown, and we'll provide some more detail in our
2 subsequent comments but the SR-47 provides
3 potentially an example where the monitor used to
4 create baseline concentrations. It wasn't really in
5 the near highway environment. It's actually a
6 monitoring -- I would need to check our comments
7 but, as I recall, it's further -- it's outside of
8 the 300 meter zone. And yet it's our understanding
9 that this proposal passed conformity even though
10 this is a new -- it's basically a new diesel freeway
11 in a new area that's going to add potentially
12 significant numbers of diesel trucks on this
13 freeway.

14 So I think that provides an example, and we
15 can provide more moving forward but I think the
16 concern is that the overall -- it's a little bit
17 circular that the argument that the SIP is supposed
18 to protect the near highway environment but it
19 doesn't -- the SIP doesn't really account for the
20 near highway environment. It's not really serving
21 that function.

22 MS. PATULSKI: Okay.

23 MS. COOK: I have a question that kind of
24 flows from that.

25 MS. PATULSKI: Go ahead.

1 MS. COOK: Adrian, it's my understanding --
2 and I'm limited in my expertise on current
3 monitoring. But it's my understanding that
4 area-wide monitors are designed to determine whether
5 the entire area is sufficiently protected for the
6 NAAQS or not. Do you have -- what evidence are you
7 offering us that suggests that the current area-wide
8 monitoring does not adequately address the near
9 roadway contribution to the area?

10 MR. MARTINEZ: Well, in our comments on
11 Exhibit A, my testimony on the south coast emissions
12 budgets provide an example of this. In the most
13 recent SIP for the south coast, the design value is
14 mainly set for the Rubidoux Station in southern
15 California, and that's located outside of this near
16 highway area. And I think -- and in our brief,
17 actually we go through the various monitors and
18 determine -- we use CARB's website to show that they
19 aren't in the near highway area.

20 And so -- and then we used the evidence,
21 and I think it's the studies even EPA's relied on,
22 the two studies on the I-405 and the I-710 and we
23 articulated in our comments several subsequent
24 monitoring studies and other studies done that we
25 think confirm that data, that this use of large grid

scales does not adequately show attainment in the
near highway environment.

MS. COOK: And from your perspective, are
transportation sources the only sources that are not
adequately represented by the area siting and
monitoring requirements?

MR. MARTINEZ: You know, I think I would
take that back to my colleagues and the people I'm
working with because I think that's a larger
discussion. I mean, we've been specifically talking
about highways and that's because it's a critical
issue in my work plan in southern California but --

MS. COOK: And have you placed any kind of
request before the agency to address the monitoring,
siting and measurement methodologies?

MR. MARTINEZ: Did you see the letter we
sent on the PM 2.5 designations? I think that's the
closest to what you're asking, but that's -- and we
discussed this issue specifically. There is a
concern about timing for the upcoming SIPs because
they'll be due in three years, so the question is
about, you know, monitoring and, you know, we have
been pushing for more monitoring of freeways. And,
in fact, South Coast Air Quality Management District
is doing some short-term monitoring on the I-710 but

1 I think the Exhibit C would provide the comments we
2 filed on this issue.

3 MS. COOK: And I have one other question
4 and I'll give up the floor here. Is NOx -- on the
5 issue, the broad issue of whether monitoring data is
6 adequate, is NOx the pollutant of primary concern?

7 MS. PATULSKI: Are you talking PM 2.5 or
8 nitrogen oxides?

9 MR. MARTINEZ: Could you just clarify your
10 question? The question is are we more concerned
11 about NOx than directly emitted PM 2.5 in the
12 freeway context?

13 MS. COOK: Yeah.

14 MR. MARTINEZ: You know, I wouldn't state
15 it that we aren't concerned about NOx because you
16 look at a place like the south coast especially in
17 relation to the recent disapproval of the attainment
18 demonstration for the 2003 ozone SIP, you know, it
19 is a concern but I think we've been focusing on the
20 directly emitted PM 2.5 in this freeway, obviously.

21 MS. COOK: Thanks.

22 MS. PATULSKI: You mentioned the litigation
23 on the adequacy of the south coast PM 2.5 SIP
24 budgets. How do you since -- you know, and our
25 proposal did not address those requirements,

1 adequacy requirements for anything related to SIP
2 budgets, how do you see that case relating to this
3 case because I know you submitted that information
4 from that case as an extra piece of information.

5 MR. MARTINEZ: Yeah, I think that's an
6 important question. I think it goes to the overall
7 adequacy of the SIP to protect these communities.
8 And we've identified a significant population in
9 southern California. We haven't looked at or I
10 haven't looked at the number of people in our
11 nonattainment areas but there are a significant
12 number of people.

13 And I think -- the argument I think that
14 was relied on that the SIP would adequately protect
15 these residents and I think that's how it all is
16 connected, that you need -- we need SIPs to actually
17 show that they will achieve the NAAQS in the near
18 highway environment. And it's our belief that the
19 current plan for the south coast does not do that.

20 MS. PATULSKI: Just to go a little further,
21 are you saying that unless an area has a SIP that it
22 accounts for that near roadway environment in the
23 way that you are describing, are you saying that
24 unless that SIP is in place in an area that hot spot
25 analyses for new projects cannot be done?

1 MR. MARTINEZ: So --

2 MS. PATULSKI: Well, let me repeat what I
3 thought I heard you say.

4 MR. MARTINEZ: Okay. Yeah.

5 MS. PATULSKI: I'm just trying to clarify
6 your statement and understand it.

7 MR. MARTINEZ: Okay.

8 MS. PATULSKI: I heard you say that the
9 proposal did not account for the case where
10 attainment -- where a project causes a violation in
11 the future beyond the attainment date and the SIP
12 also does not address that NAAQS concern and that
13 the monitors -- without a near roadway monitor being
14 considered within the SIP attainment demonstration
15 that there was no way to evaluate whether or not an
16 individual new project met the clean air
17 requirements. I'd like to just understand that.

18 MR. MARTINEZ: Yeah. I think what would
19 make most sense is what I'll do is when I get back
20 to Los Angeles I'll forward you our comments on the
21 SR-47 project, and that that relates to this issue.
22 Our understanding of conformity for freeways because
23 we don't have an approved SIP on the PM 2.5 issue
24 but that -- I think that will clarify and there are
25 subsequent questions I think you can maybe follow up

1 after me.

2 MS. PATULSKI: If you wanted that to be
3 part of the record of the proposal, you should also
4 submit that to the docket just as a point of
5 clarification.

6 MR. MARTINEZ: Okay.

7 MS. PATULSKI: I have another question but
8 I'll wait. Do you think transportation conformities
9 hot spot analysis requirements apply to only new
10 projects or do you think that it applies to existing
11 projects that have already had approvals?

12 MR. MARTINEZ: That's another one that I'd
13 probably want to take back.

14 MS. PATULSKI: That's fine. And then just
15 to clarify a question on the information you
16 provided on the freight experience in California,
17 when an individual project sponsor determines if
18 they've met the clean air hot spot requirements, do
19 you think they also need to account for in addition
20 to the project's emissions other surrounding sources
21 in the local area of the project, other emission
22 sources like harbors and other sources?

23 MR. MARTINEZ: So is the question about the
24 cumulative impact --

25 MS. PATULSKI: Yes.

1 MR. MARTINEZ: -- from the project and
2 whether that's covered by the conformity provision?

3 MS. PATULSKI: Well, you had presented a
4 lot of information about freight management and your
5 concerns about freights, and that involves other
6 types of emission sources that are not on road,
7 highway or transit projects that we do hot spot
8 analysis for.

9 MR. MARTINEZ: Uh-huh.

10 MS. PATULSKI: But obviously, so I guess I
11 was just -- if, for example, a highway is being
12 built or expanded to service a freight port or a
13 transfer station in some way, do you think in
14 addition to the project's increased truck traffic
15 that they should also account in the background
16 concentrations the emissions from the other off-road
17 sources from the project?

18 MR. MARTINEZ: I guess let me start by
19 saying a concern of NRDC specifically about the
20 freight expansion in southern California is kind of
21 the segmentation of the expansion. I think what
22 you're seeing is you're seeing a lot of individual
23 projects moving forward that could arguably create
24 factual predicate for these additional facilities.

25 So, for example, if you add 3.9 million

1 TEUs to the port of LA and Long Beach, arguably how
2 is that going to get out of the ports of LA and Long
3 Beach. So there might be some associated facilities
4 being pushed. Examples include I-710, SR-47, you
5 know, enhancements perhaps on the 110, those types
6 of things. So that is a concern.

7 Now, to get to your question about whether
8 cumulative impacts, that might be another followup.
9 But I just want to give the bookmark that NRDC is
10 concerned about the segmentation and, specifically,
11 we filed similar comments on the conformity finding
12 for the whole regional transportation plan in
13 southern California because we think, obviously, our
14 concerns about the emissions budgets also raise
15 concerns about the adequacy of that plan to show
16 attainment in the near highway environment.

17 MS. PATULSKI: Okay. Those are all the
18 questions I have. Ms. Cook?

19 MS. COOK: You mentioned the port expansion
20 projects. There are also emission reduction
21 programs that are funded or intended to be funded by
22 the same pot of money; are there not?

23 MR. MARTINEZ: American Reinvestment and
24 Recovery Act?

25 MS. PATULSKI: Specifically, DERA is what

1 I'm thinking.

2 MR. MARTINEZ: Yeah, there are some DERA
3 funds and we just actually submitted a letter
4 talking about the port issues and related to an
5 application that the ports of LA and CAQMD submitted
6 related here. But there is funding out there and
7 the ports do have a clean air action plan. They're
8 working on some draft standards that they would --
9 it's unclear what these standards would actually be,
10 if they're enforceable or what, but they're trying
11 to determine what's their fair share of emission
12 reductions for attainment and they're looking
13 specifically, it's my understanding, looking at the
14 attainment years 2014 and 2023 in the south coast.

15 And so those are good efforts but I think
16 the sheer magnitude of diesel equipment concentrated
17 in this one area does pose particular health
18 problems and it's consistently identified. You
19 know, that doesn't mean NRDC is opposed to efforts
20 to quote iron, replace the trucks. In fact, we're
21 actively supporting the measures CARB regulations.
22 We're in the courts helping defend the port's Clean
23 Truck Program.

24 But I think to address this issue, there
25 might need to be a move to different technologies to

1 move freight and, specifically we are looking at and
2 promoting, you know, electrification of some of
3 these facilities because, you know, there are many
4 places in the nation that it could be tried to do
5 these types of systems but southern California could
6 prove to be a very good place for this to happen.
7 And it's the juxtaposition of just the sheer amount
8 of freight and then also the fact you have so many
9 residents living in close proximity to these
10 facilities. And so that's I guess a long-winded
11 answer to your question.

12 MS. COOK: Thank you.

13 MS. PATULSKI: I guess I have one other
14 question. In the example you provided for a project
15 causing a violation in the future that is of concern
16 to our rule, do you think new projects need to -- if
17 a project in the future reduces but doesn't
18 eliminate a violation that's predicted out in the
19 future or projected to occur, do you -- is that a
20 concern that you're trying to address in your
21 comments? This is a project that would improve air
22 quality in the future but would not entirely all by
23 itself eliminate a projected violation in the
24 future.

25 MR. MARTINEZ: This would be -- and are you

1 talking -- you're talking specifically
2 infrastructure not --

3 MS. PATULSKI: I'm talking just a new
4 highway project.

5 MR. MARTINEZ: A new highway project.

6 MS. PATULSKI: I'm trying to understand the
7 situation that you're trying to address in your
8 comments.

9 MR. MARTINEZ: Yeah. I guess the
10 understanding is the current proposal, it just
11 allows for conformity if it's not going to worsen an
12 existing NAAQS violation. It's our view that the
13 transportation projects and conformity Clean Air Act
14 are meant to push towards attainment.

15 So in some situations it might not --
16 actually, a good example of this is the port of LA
17 and Long Beach projects. There's a commitment to --
18 and it's a little bit different situation, but there
19 is a commitment to adopt San Pedro Bay standards,
20 which are these standards I just referred to, by
21 2007. And the idea of those standards was that they
22 would develop their fair share of emissions
23 reductions.

24 So the ports passed several projects that
25 purportedly were going to reduce emissions under

1 their CEQA baseline. CEQA is California
2 Environmental Quality Act, their CEQA baseline. The
3 argument that several advocates made was, okay,
4 arguably if this is going to reduce emissions, that
5 may be a good thing but is it going to reduce
6 emissions enough to ensure that they meet their
7 standards?

8 Because you might have a project that
9 reduces emissions but doesn't do it enough to get it
10 to attainment. I think that's kind of an analogous
11 situation here is we need to make sure that
12 attainment is reached specifically in these near
13 highway environments. But I think it might make
14 sense for me to follow up on the comments to that
15 question too.

16 MS. PATULSKI: Does anybody else on the
17 panel have any clarifying questions?

18 MS. COOK: No.

19 MS. BERRY: No.

20 MS. PATULSKI: Do you have any remaining
21 statements?

22 MR. MARTINEZ: No. I think I submitted
23 everything.

24 MS. PATULSKI: Thank you.

25 MR. MARTINEZ: Thank you.

MS. PATULSKI: Why don't we have a short
break.

(Proceedings suspended at 10:20 a.m. and
adjourned at 3:00 p.m.)

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CERTIFICATE

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

I, LAUREL A. JACOBY, Certified Shorthand
Reporter, a Notary Public, hereby certify that I recorded
in shorthand the foregoing proceedings; and that the
foregoing is a true, correct and complete transcript of
the foregoing proceedings.

I also certify that I am not a relative or
employee of a party or an attorney for a party; or
financially interested in the action.

LAUREL A. JACOBY, CSR-5059, RPR
Notary Public, Oakland County, Michigan
My commission expires: 9/1/11
Dated: This 22nd day of June, 2009.